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ATTORNEY DOCKET NO: 67526

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : GIEFER  
Serial No : 09/600,832  
Confirm. No : 2069  
Filed : July 21, 2000  
For : SLOT COVER...  
Art Unit : 3682  
Examiner : V. Luong  
Dated : January 23, 2006

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

PETITION TO THE DIRECTOR UNDER 37 CFR 1.813

Applicant respectfully requests that the rules be suspended or waived in this application so that applicant can respond to an Ex parte Quayle Office action.

An Ex parte Quayle Office action was made on March 22, 2005. Applicant submitted an amendment on May 20, 2005 in response to this Office action. Applicant received an action mailed on June 7, 2005, indicating that the May 20, 2005 amendment was not entered because of new matter. Applicant petitioned the Director on June 24, 2005 to overrule the Examiner and allow the May 20 amendment to be entered.

In a Decision dated September 26, 2005, the Director indicated that parts of the June 7 action were improper. In particular the September 26 Decision indicated that portions of the May 20 amendment were not new matter, and that a requirement of the June 7, 2005 action is improper. The September 26 Decision also indicated that portions of the May 20 amendment

were new matter, and therefore the Decision did not allow the May 20 amendment to be entered. Applicant requested reconsideration of the September 26 Decision on November 1, 2005. A Decision on renewed petition dated December 14, 2005 denied applicant's renewed petition.

The Decision also stated that the period for response to the Office action mailed June 7, 2005, continues to run. Applicant notes that the June 7, 2005 communication is not officially indicated as an Office action, and that the period for reply is indicated in this communication to expire on the date set forth in the Ex parte Quayle action. The Ex parte Quayle action is dated March 22, 2005. The period for response, including all possible extensions, has therefore expired before the date of the Decision.

Applicant understands that a petition to the Director does not automatically stay the period for response. However applicant respectfully request relief from the original period of response in view of the fact that the Examiner's refusal to enter the amendment was flawed. Because of the flaws in the refusal to enter, applicant was unable to modify the application to place the application in condition for allowance. Also, because of the flaws, it was necessary to petition the Director. Based on the September 26 Decision, applicant would submit a different amendment that applicant believes would place the application in condition for allowance. A copy of such an Amendment is attached. The processing of this Petition by the US Patent Office caused applicant's time period to expire, and unfairly burdens the applicant.

The Examiner has repetitively indicated that certain changes to the specification and drawings are new matter, such as the elastic portion. The September 26 Decision indicated that

these certain changes were not new matter. If applicant was properly informed regarding the new matter, prosecution of this application would have been more compact, and a more responsive amendment would have been timely filed. Because applicant felt that the June 7 action improperly indicated new matter, applicant felt that the June 24 petition was necessary. Applicant also felt that no further action could be taken to place the application in condition for allowance without unduly forfeiting entitled patent protection. The September 26 Decision supports applicant's position that if all of the new matter indicated on June 7 were removed, and the corresponding claims canceled, some entitled patent protection would have been unnecessarily lost.

Applicant has repetitively tried to amend the application to address the formal objections in the Ex parte Quayle Action and in previous actions. However the Examiner felt that many of applicant's attempt to address these formal objections were new matter. Applicant contacted the Examiner by telephone to try to determine what changes would be acceptable to the Examiner. The Examiner could not, or would not, give an indication of what type of changes would be acceptable. It is applicant's position that an Ex parte Quayle action, with its limited period for response, is improper if the Examiner does not feel that the application can be amended to overcome the formal objections. Applicant has therefore been unduly burdened by the limited time period of an Ex parte Quayle action, without any indication of a solution. This necessitated the Petition, which cause the expiration of the period for response.

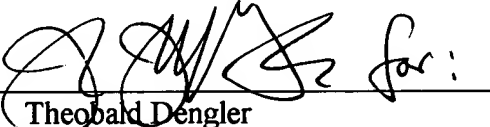
Applicant respectfully requests that the Director waive or suspend the period for response to the March 22 Office action, so that an additional amendment can be filed taking the

consideration the September 26 Decision. With this petition applicant is submitting an additional amendment in view of the September 26 decision.

In the alternative, applicant respectfully petitions to revive this application as being unavoidably abandoned under 37 CFR 1.137(a). It is applicant's position that applicant could take no further action to place the application in condition for allowance until the September 26 decision, without forfeiting entitled patent protection. With this petition applicant is submitting a reply in the form of an amendment, and the required terminal disclaimer.

If there are any additional facts that are pertinent to this matter, the Director is invited to contact Applicant's representative by telephone to further discuss this matter.

Respectfully submitted  
for Applicant,

By:   
Theobald Dengler  
Registration No. 34,575  
McGLEW AND TUTTLE, P.C.

TD:  
67526.33

enclosed:      Amendment  
                    Terminal disclaimer  
                    Petition fee set forth in 37 CFR 1.17(h)


DATED:        January 23, 2006  
                    BOX 9227 SCARBOROUGH STATION  
                    SCARBOROUGH, NEW YORK 10510-9227  
                    (914) 941-5600

SHOULD ANY OTHER FEE BE REQUIRED, THE PATENT AND TRADEMARK OFFICE IS HEREBY REQUESTED TO CHARGE SUCH FEE TO OUR DEPOSIT ACCOUNT 13-0410.

I HEREBY CERTIFY THAT THIS CORRESPONDENCE IS BEING DEPOSITED WITH THE UNITED STATES POSTAL SERVICE AS EXPRESS MAIL IN AN ENVELOPE ADDRESSED TO:

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McGLEW AND TUTTLE, P.C.

BY:  DATE: January 23, 2006



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MAILED  
FROM DIRECTORS OFFICE

DEC 14 2005

TECHNOLOGY CENTER 3600

In re Application of  
Andreas Giefer  
Serial No: 09/600,832  
Filed: July 21, 2000  
Attorney Docket No.: 67526  
For: SLOT COVER OF A SHIFTING DEVICE :

DECISION ON RENEWED  
PETITION UNDER  
37 CFR §1.181

This is a decision on applicant's renewed petition under 37 CFR §1.181 filed November 1, 2005 to request relief from the original period of response set forth in the *Ex parte* Quayle action dated March 22, 2005. Additionally, applicant proposes further amendments to the drawings.

The petition is **DENIED**.

DUE DATE:

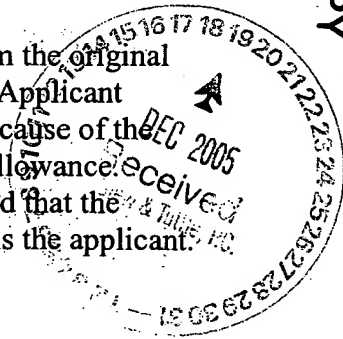
Jan 14, 2006

The record reflects that on March 22, 2005 an *Ex parte* Quayle action was mailed indicating that proposed drawing changes of December 26, 2001 would not be entered because the proposed changes raise the issue of new matter and fail to place the case in condition for allowance. On May 20, 2005 applicant responded to the *Ex parte* Quayle action with proposed amendments to both the specification and to the drawings.

On June 7, 2005 an Advisory Action was mailed indicating that the proposed changes of May 20, 2005 would not be entered because the proposed amendments to the specification and to the drawings raise the issue of new matter. The Advisory Action indicated that the period for reply expires on the date set forth in the *Ex parte* Quayle action of March 22, 2005 and that extensions of time may be granted under 37 CFR 1.136(a). On June 24, 2005 applicant filed a petition under 37 CFR §1.181 to invoke supervisory review of the June 7, 2005 Advisory Action. The petition of June 24, 2005 was dismissed.

In the instant petition, applicant proposes drawing changes and requests relief from the original period of response set forth in the *Ex parte* Quayle action dated March 22, 2005. Applicant argues that the examiner's refusal to enter the amendment was flawed and that, because of the flaws, applicant was unable to modify the application to place it in condition for allowance. Applicant argues that due to said flaws it was necessary to petition the Director and that the processing of the petition caused applicant's time to expire, which unfairly burdens the applicant.

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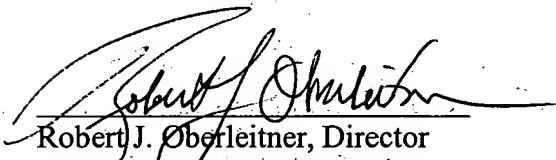
37 CFR § 1.181(f) states that "The mere filing of a petition will not stay any period for reply that may be running against the application, nor act as a stay of other proceedings...." Given that the last Office Action was mailed on March 22, 2005, the period to respond with any extensions of time expired on September 22, 2005.

Accordingly, as applicant has not responded timely to either place the application in condition for allowance or file for an extension of time to thus keep the application pending, the application is abandoned. The proposed drawing changes dated November 1, 2005 cannot be considered.

Applicant's recourse is to file a petition to revive the application under the unintentional standard as set forth in 37 CFR §1.137(b), which will be decided by the Office of Petitions.

**SUMMARY:** The Petition is **DENIED**.

This application stands **ABANDONED**.



Robert J. Oberleitner, Director  
Patent Technology Center 3600  
Telephone No.: (571) 272-5350

RJO:IT  
12/08/05

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